STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 23, 2020
v	No. 347551 Ingham Circuit Court
LOGAN BROOKE TURNER, Defendant-Appellant.	LC No. 17-001046-FH

Before: CAVANAGH, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

A jury convicted defendant, Logan Brooke Turner, of one count of operating a motor vehicle with the presence of any amount of a schedule 1 controlled substance in her body, causing death. MCL 257.625(4)(a); MCL 257.625(8). The trial court sentenced her to 70 to 180 months in prison. Defendant now appeals by right, arguing that there was insufficient evidence to support her conviction and that her conviction under MCL 257.625(8) violated her equal-protection rights. We affirm.

I. RELEVANT FACTS

At approximately 7:50 p.m. on September 22, 2017, defendant was driving a Jeep Grand Cherokee north on Martin Luther King Boulevard in Lansing, Michigan, when she failed to yield as she was turning left and struck a motorcyclist; the motorcyclist died as a result of his injuries. Responding Lansing Police Officer Dillon Reust testified that defendant admitted to him she had smoked marijuana "earlier that day." Officer Reust's exchange with defendant was recorded by his body camera and played several times for the jury.

Lansing Police Sergeant Edgar Guerra testified that when he spoke with defendant at the scene, he "had no idea" she had told Officer Reust she had consumed marijuana earlier in the day. Sergeant Guerra decided that under "common procedure" defendant should have her blood drawn because a blood test would indicate whether defendant had alcohol or drugs in her system, and defendant agreed to get her blood drawn. At some point defendant stated that she was experiencing pain in her side, so Sergeant Guerra arranged for an ambulance to take her to the hospital. After defendant got into the ambulance, her father, Stephen Turner, arrived. Sergeant Guerra spoke with

Turner, explained what had happened as far as he was able to, and told Turner the plan for defendant to get her blood drawn while at the hospital. Sergeant Guerra testified that he took defendant and her father at their word that they were going to go to the hospital and would wait for him to arrive.[1] The ambulance left the scene at approximately 8:35 p.m.

When Sergeant Guerra arrived at the hospital at approximately 8:55 p.m., defendant had already left the hospital with Turner. Sergeant Guerra testified that he called defendant and she told him "she would be right back in about ten minutes." After 20 minutes with no sign of defendant, Sergeant Guerra embarked on a series of phone calls and texts trying to reach defendant and getting no response. Turner testified that instead of immediately returning to the hospital after Sergeant Guerra's first phone call, he drove his daughter to her boyfriend's house in Dimondale, and then to his own apartment in Olivet. Defendant finally called Sergeant Guerra back at around midnight, claiming she was trying to find someone to drive her to the hospital and that she would meet him there. She arrived at the hospital soon after and had her blood drawn.

The blood test, taken more than four hours after the fatal accident, showed that defendant's blood had a THC content of five nanograms per milliliter (ng/mL). THC (tetrahydrocannabinol), "the psychoactive ingredient of marijuana, is a schedule 1 controlled substance under MCL 333.7212." *People v Derror*, 475 Mich 316, 319; 715 NW2d 822 (2006), overruled in part on other grounds by *People v Feezel*, 486 Mich 184; 783 NW2d 67 (2010).

Turner testified that at one point while at his apartment before taking defendant back to the hospital for the blood draw, he went to the restroom, and when he came back, he saw defendant outside on the balcony smoking a marijuana joint.

The jury convicted defendant as described above.

II. ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

Defendant first contends that the prosecution did not present sufficient evidence from which rational jurors could conclude beyond a reasonable doubt that she had THC in her blood at the time of the accident. We disagree.

This Court reviews a challenge to the sufficiency of the evidence by reviewing the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt. See *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011); *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). A reviewing court must "draw all reasonable inferences and make credibility choices in support of the jury verdict," *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), and thereby refrain from interfering with the factfinder's role in deciding the

[1] After Turner testified, claiming he did not speak with any officers at the scene, Sergeant Guerra was recalled to the stand as a rebuttal witness and his bodycam video was played for the jury, as admitted by stipulation, and Sergeant Guerra narrated regarding the exchange.

weight and credibility to give to a witness's testimony, *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). This Court must consider all the inferences that can be fairly drawn from the evidence when considering the sufficiency of the evidence because, when evidence is relevant and admissible, "it does not matter that the evidence gives rise to multiple inferences or that an inference gives rise to further inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). In such cases, it is for the factfinder alone to "determine what inferences may be fairly drawn from the evidence and determine the weight to be accorded those inferences." *Id.*

MCL 257.625 states, in relevant part:

> (4) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes the death of another person is guilty of a crime as follows:
>
> (a) Except as provided in subdivisions (b) and (c), the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than $2,500.00 or more than $10,000.00, or both. . . .
>
> * * *
>
> (8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public . . . within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212 . . . .

Thus, to convict defendant under MCL 257.625(8), the prosecution had to present sufficient evidence from which rational jurors could conclude beyond a reasonable doubt that (1) defendant's operation of a motor vehicle caused death, and (2) at the time defendant was operating the motor vehicle, she had "any amount" of THC in her body. See *Derror*, 475 Mich at 333-334. As pertains to the present case, MCL 257.625a(6)(a) establishes a rebuttable presumption that the amount of a controlled substance in a driver's blood "as shown by chemical analysis of the person's blood . . . is admissible into evidence in any civil or criminal proceeding and is presumed to be the same as at the time the person operated the vehicle." Defendant contends that the four hours between the accident and the blood draw and Turner's testimony that she smoked marijuana shortly before the blood draw renders the blood draw unreliable, thus rebutting the presumption that the THC found in her blood draw was present in her blood at the time she operated the vehicle. We disagree.

The evidence regarding defendant's ingestion of THC consisted of her admission to Officer Reust, supported by the recording from his body camera, that she had smoked marijuana earlier on the day of the accident, and her father's testimony that she smoked marijuana shortly before returning to the hospital around midnight for the blood draw. Defendant contends that the prosecutor wants this Court to accept as reasonable the inference that defendant smoked marijuana after the accident to intentionally contaminate her blood sample. She argues that this inference is unreasonable because it would require defendant to have foreseen that the prosecutor would charge

her under the "zero tolerance" provision of MCL 257.625(8) rather than an "intoxication" theory. However, this is not the inference that the prosecution invited the jury to draw from Turner's testimony. To be sure, Sergeant Guerra testified that police officers typically follow a driver to the hospital to get a blood draw because drivers "consume alcohol or marijuana or drugs to mask what [they] had done prior to that night." But the possibility raised by the prosecutor was that Turner was not being truthful when he said that defendant smoked marijuana at his apartment shortly before the blood draw.

On cross examination, the prosecutor elicited testimony from Turner that he was trying to protect his daughter, and that he knew defendant was going back to the hospital to give blood after smoking marijuana at his apartment, but he did not tell anyone at any time prior to trial that she had smoked marijuana before reporting for the blood draw. Asked why he had not told police officers that defendant smoked marijuana prior to her blood draw, Turner said, "If they didn't come question me, what was the sense of me talking to them." In her closing argument, the prosecutor stressed that it made no sense for defendant to smoke marijuana shortly before having a blood test to determine whether there was a controlled substance in her system, implied that Turner was being untruthful, and said that the only thing that made sense was that defendant "waited long enough until she wasn't feeling high so she could go get her blood drawn and she wouldn't have any evidence of THC in her blood." The credibility and weight to give Turner's testimony was a matter for the jury to decide. See *Mehall*, 454 Mich at 6.

Evidence of defendant's actions provided the jury with additional information from which to draw inferences. The evidence shows that defendant agreed to go to the hospital to have her blood drawn and to be checked out for any injuries; Sergeant Guerra testified that he told both defendant and her father that he would meet them at the hospital. But defendant and her father left the hospital after waiting "roughly about 20 minutes," without defendant being checked for injuries and before Sergeant Guerra arrived. Turner testified that the decision to leave the hospital "wasn't on [him], technically. It was on [his] daughter." When Sergeant Guerra reached defendant by telephone, defendant told the sergeant that she would come back to the hospital for the blood draw within 10 minutes. Turner testified that he heard the conversation, but, again, defendant's failure to return to the hospital when she said she would "still doesn't fall on [him]." Over the next few hours, defendant did not respond to Sergeant Guerra's repeated calls and text messages, nor was Sergeant Guerra able to locate her at the Dimondale address listed on her driver's license or at an address in Potterville, thought to be her father's address.

The jury saw video of defendant acknowledge at the scene that she had smoked THC earlier on the day of the accident and heard testimony from a forensic scientist stating that defendant's blood draw contained THC. The jury heard Turner affirm that he wanted to protect his daughter. He also admitted that he left the hospital before she could be medically checked for injuries, deflected responsibility for that decision as well as defendant's subsequent decision not to go back to the hospital when she told Sergeant Guerra she would, and essentially conceded that he did not tell anyone before trial that she had smoked marijuana shortly before the midnight blood draw. Further, Turner's testimony that he did not talk to any police officers at the scene of the accident was rebutted by video from Sergeant Guerra's body camera showing Turner and the sergeant in conversation at the scene. From this evidence, the jury could fairly have inferred that defendant knew she had THC in her system at the time of the accident and was evading the police and seeking to delay the blood draw as long as she could while still appearing to be cooperative, in the hope

that the THC had left her system. The jury could further reject Turner's testimony that defendant smoked marijuana shortly before the blood draw, and thus reject her argument that the blood draw was unreliable with respect to what was in her system at the time of the accident.

Defendant contends that it is unreasonable to infer that she evaded the police or tried to delay the blood draw. Instead, she attributes her actions to shock, fear, and the desire to take refuge with her father. She argues that if she had wanted to delay the blood draw until the THC was out of her system, she would not have presented herself at the hospital voluntarily, but would have waited for officers to discover her and obtain a warrant for her blood. However, the same facts may give rise to multiple inferences, and it is up to the jury to "determine what inferences may be fairly drawn from the evidence and determine the weight to be accorded those inferences." *Hardiman*, 466 Mich at 428. Drawing all reasonable inferences and making credibility choices in support of the jury verdict, *Nowack*, 462 Mich at 400, we conclude that the prosecution presented sufficient evidence to allow the jury to find beyond a reasonable doubt that defendant had THC in her blood at the time of the accident.[2]

B. EQUAL PROTECTION

Defendant next argues that MCL 257.625(8) violates the Equal Protection Clause because it treats similarly situated marijuana users differently.[3] Specifically, defendant argues that "[m]edical-marijuana cardholders are entitled to internal possession of THC while driving, so long as they are not impaired, and those without a medical-marijuana card are subject to prosecution under a strict liability theory of criminal culpability." Defendant concludes therefrom that the applicability of MCL 257.625(8) on the basis of whether one holds a medical marijuana card or not is arbitrary and unconstitutional. We disagree.

We review issues regarding equal protection and statutory construction de novo. *Does 11-18 v Dep't of Corrections*, 323 Mich App 479, 485-486; 917 NW2d 730 (2018). Because defendant did not raise this issue in the trial court, it is unpreserved and our review is for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763. "An error is plain if it is 'clear or obvious,' and it affects substantial rights if it 'affected the outcome of the lower court proceedings.' " *People v Miller*, 326 Mich App 719, 725-726; 929 NW2d 821 (2019), quoting *Carines*, 460 Mich at 764-765. Reversal is warranted only "when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the

[2] During deliberations, the jury sent a note to the trial court asking if there was a legal presumption that the THC found in defendant's blood draw was present in her blood at the time of the accident. The court replied that there was, but that the presumption was rebuttable. It seems reasonable to infer that the jury concluded that the evidence did not rebut the presumption.

[3] We note that the accident at issue and defendant's conviction occurred before passage of the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 *et seq*. In the absence of any evidence that defendant had a medical-marijuana card, her consumption of marijuana was illegal.

fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id.* (quotation marks and citation omitted; alteration in original).

Equal protection of the law is guaranteed by both the United States and Michigan Constitutions. US Const, Am XIV; Const 1963, art 1, § 2. "When a legislative classification is challenged as being violative of equal protection, the validity of the classification is measured by one of three tests. Which test is appropriate depends on the type of classification and the nature of the interest affected." *People v Pitts*, 222 Mich App 260, 272-73; 564 NW2d 93 (1997). The "strict scrutiny" test applies to legislation that "creates an inherently suspect classification, such as race, alienage, ethnicity, and national origin or affects a fundamental interest." *Id*. at 273. A mid-level "substantial relationship" test applies to classifications that are suspect, but not inherently suspect. *Id*. The "rational basis" test applies to social and economic legislation, such as the statute at issue here. *Id*.

> Under the rational basis test, the legislation is presumed to be constitutional and the party challenging the statute has the burden of proving that the legislation is arbitrary and thus irrational. Under this test, a statute will be upheld if the classification scheme it has created is rationally related to a legitimate governmental purpose. A rational basis exists when it is supported by any state of facts either known or which could reasonably be assumed. A classification that has a rational basis is not invalid because it results in some inequity. Further, this test does not measure the wisdom, need, or appropriateness of the legislation. [*Id*. at 273-274.]

The Michigan Supreme Court has already determined that MCL 257.625(8) is not an arbitrary regulation. *Derror*, 475 Mich at 338-340. The purpose of the statute "is to prevent persons from driving with any amount of a schedule 1 controlled substance in the body, whether or not the substance is still influencing them." *Id*. at 338. Defendant does not take issue with the *Derror* Court's conclusions, but argues that subsequent passage of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq*., and the Supreme Court's decision in *People v Koon*, 494 Mich 1, 6; 832 NW2d 724 (2013) (holding that, for purposes of the MMMA, "under the influence" "contemplates something more than having any amount of marijuana in one's system and requires some effect on the person") undermined the general applicability of MCL 257.625(8) as announced in *Derror* by creating two classifications of "sober marijuana-users." The MMMA prohibits the prosecution of an individual who possesses a medical marijuana card who is not " 'under the influence' " of marijuana. *Koon*, 494 Mich at 3. In contrast, the Michigan Vehicle Code, MCL 257.1 *et seq*., prohibits an individual from driving with any amount of marijuana in his or her system. *Id.* Defendant argues that "[d]iscriminating between marijuana-using, sober drivers based on whether the individual possesses a medical marijuana card is arbitrary and not rationally related to the government's legitimate interest in traffic safety."

This Court recently addressed a similar issue in *People v Lafferty*, unpublished per curiam opinion of the Court of Appeals, issued May 14, 2019 (Docket No. 340137). We recognize that unpublished opinions are not binding precedent, but this Court may consider them as instructive or persuasive. *People v Jamison*, 292 Mich App 440, 445; 807 NW2d 427 (2011). We find the reasoning in *Lafferty* regarding the distinction between medical marijuana patients and other marijuana users persuasive and adopt it as our own:

> The distinction between medical marijuana patients and other marijuana users is a rational distinction for the Legislature to draw. Medical marijuana patients use marijuana at the direction of a physician to alleviate often debilitating symptoms. MCL 333.26423(a) and (h). All others use marijuana without professional supervision. The Legislature could rationally conclude that a medical marijuana user, under the supervision of a medical professional, would use marijuana in a way that would not pose a risk to public safety. There is no parallel for unsupervised users. Therefore, the Legislature could reasonably conclude that non-medical marijuana users as a class pose a greater risk to the public, and that a zero-tolerance standard is the appropriate measure to reduce that risk. The Legislature has drawn a similar parallel for the risky group of teenage drunk drivers, who are subject to a zero-tolerance policy, while of-age drinkers are subject to a higher threshold limit. *People v. Haynes*, 256 Mich App 341, 347; 664 NW2d 225 (2003). [*Lafferty*, unpub op at 4.]

As defendant points out, these classifications are not perfect: medical marijuana patients may abuse the drug, use it recreationally, or drive too soon after having ingested marijuana. However, under rational-basis review, perfection is "neither possible nor necessary." *Massachusetts Bd of Retirement v Murgia*, 427 US 307, 314; 96 S Ct 2562; 49 L Ed 2d 520 (1976). Nor is it the judiciary's place to "substitute its judgment for that of the Legislature as to what is best or what is wisest. So long as the Legislature's judgment is supported by a rational or reasonable basis, the choices made and the distinctions drawn are constitutional." *Lafferty*, unpub op at 4, quoting *O'Donnell v State Farm Mut Auto Ins Co*, 404 Mich 524, 542; 273 NW2d 829 (1979). Based on the foregoing, we conclude, that defendant has failed to establish that the distinction between medical marijuana users and illegal marijuana users is not "rationally related to a legitimate government purpose." *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000). Accordingly, defendant's equal protection claim must fail.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher